



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

MATTER OF I- LLC

DATE: OCT. 5, 2018

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a provider of engineering consulting services, seeks to employ the Beneficiary as a senior marine structural engineer. It requests her classification under the second-preference, immigrant category as a member of the professions holding an advanced degree. Immigration and Nationality Act (the Act) section 203(b)(2)(A), 8 U.S.C. § 1153(b)(2)(A). This employment-based, “EB-2” category allows a U.S. business to sponsor a foreign national for lawful permanent resident status to work in a position requiring at least a master’s degree, or a bachelor’s degree followed by five years of experience.

The Director of the Texas Service Center denied the petition. The Director concluded that the Petitioner did not demonstrate its required ability to pay the position’s proffered wage.

On appeal, the Petitioner submits additional evidence. It also asserts that the Director disregarded and misinterpreted prior evidence.

Upon *de novo* review, we will withdraw the Director’s decision and remand the matter for entry of a new decision consistent with the following opinion.

**I. EMPLOYMENT-BASED IMMIGRATION**

Employment-based immigration generally follows a three-step process. To permanently fill a position in the United States with a foreign worker, a prospective employer must first obtain certification from the U.S. Department of Labor (DOL). *See* section 212(a)(5)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i). DOL approval signifies that insufficient U.S. workers are able, willing, qualified, and available for a position, and that employment of a foreign national will not harm wages and working conditions of U.S. workers with similar jobs. *Id.*

If the DOL approves a position, an employer must next submit the labor certification with an immigrant visa petition to U.S. Citizenship and Immigration Services (USCIS). *See* section 204 of the Act, 8 U.S.C. § 1154. If USCIS approves a petition, a foreign national may finally apply for an immigrant visa abroad or, if eligible, adjustment of status in the United States. *See* section 245 of the Act, 8 U.S.C. § 1255.

## II. ABILITY TO PAY THE PROFFERED WAGE

A petitioner must demonstrate its continuing ability to pay a position's proffered wage, from a petition's priority date until a beneficiary obtains lawful permanent residence. 8 C.F.R. § 204.5(g)(2). Evidence of ability to pay must include copies of annual reports, federal income tax returns, or audited financial statements. *Id.*

Here, the labor certification states the proffered wage of the offered position of senior marine structural engineer as \$110,178 a year. The petition's priority date is May 1, 2017, the date the DOL accepted the accompanying labor certification application for processing. *See* 8 C.F.R. § 204.5(d) (explaining how to determine a petition's priority date).

The record lacks required evidence of the Petitioner's ability to pay in 2017, the year of the petition's priority date. The Petitioner submitted a copy of a profit-and-loss statement for January 2017 through February 2018. The statement, however, does not indicate that it was audited. It therefore is not an "audited financial statement" under 8 C.F.R. § 204.5(g)(2) and does not establish the Petitioner's ability to pay the proffered wage from the priority date onward.

The Director found that the Petitioner did not establish its claimed request for an automatic extension of time in which to file its 2017 federal income tax return.<sup>1</sup> On appeal, however, the Petitioner documents that request. The record therefore establishes the unavailability of the Petitioner's 2017 tax return as of the appeal's filing.

Because of the appeal's pendency, the Petitioner should now be able to submit copies of its 2017 federal income tax return. We will therefore remand this matter to the Director. On remand, the Director should notify the Petitioner that it must submit required evidence of its ability to pay the proffered wage in 2017. It may also submit additional evidence of its ability to pay, including documentation in support of the factors stated in *Matter of Sonogawa*, 12 I&N Dec. 612 (Reg'l Comm'r 1967). The Director should provide the Petitioner with a reasonable opportunity to respond. Upon a timely response, the Director should review the entire record and enter a new decision.

## III. CONCLUSION

The record on appeal lacks required evidence of the Petitioner's ability to pay the proffered wage during the year of the petition's priority date. As of the appeal's filing, however, required evidence for that year was not yet available.

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<sup>1</sup> The record also indicates that, because of the effects of Hurricane Harvey, the Petitioner received additional extension time to file its 2017 tax return. *See* U.S. Internal Revenue Serv. (IRS), "IRS Gives Tax Relief to Victims of Hurricane Harvey" (Aug. 28, 2017), <https://www.irs.gov/newsroom/irs-gives-tax-relief-to-victims-of-hurricane-harvey-parts-of-texas-now-eligible-extension-filers-have-until-jan-31-to-file> (last visited Sept. 27, 2018).

*Matter of I- LLC*

**ORDER:** The decision of the Director is withdrawn. The matter is remanded for entry of a new decision consistent with the foregoing analysis.

Cite as *Matter of I- LLC*, ID# 1823428 (AAO Oct. 5, 2018)